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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/817,535  | 03/26/2001  | Hector Franco        | HFRANCO.001A        | 6849             |
| 7590  | 11/18/2004  |                      | EXAMINER            |                  |
| Hector Franco<br>999-A La Mesa Terrace<br>Sunnyvale, CA 94086 |             |                      | POND, ROBERT M      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3625                |                  |

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | Application No.<br>09/817,535 | Applicant(s)<br>FRANCO, HECTOR |
|------------------------------|-------------------------------|--------------------------------|
|                              | Examiner<br>Robert M. Pond    | Art Unit<br>3625               |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 June 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-4,6-14 and 16-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-4,6-14 and 16-19 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

The Applicant amended Claims 7 and 16. All pending claims (1-4, 6-14, and 16-19) were examined in this non-final Office Action.

***Response to Arguments***

**Rejection under 35 USC 102 & 103**

Applicant's arguments, see Remarks, filed 01 June 2004, with respect to the rejection(s) of claim(s) 1-4, 6-14, and 16-19 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Yamada and Netship. Yamada teaches a consumer using an electronic commerce system to order products from multiple merchants, fulfillment management having the items delivered directly to the consumer or delivered to an alternative predetermined delivery location selected by the consumer for consumer pick-up. Netship teaches decentralizing distribution and warehousing of merchandise using local stores, local stores serving as aggregators of purchased items from online consumers, and delivering directly from the local store to consumers or providing consumer pick-up.

***Specification***

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claims 1, 2, 4, 6-14, and 16-18 are rejected under 35 USC 103(a) as being unpatentable over Yamada (patent number 6,336,100), in view of Netship (PTO-892, Item: U).**

Yamada teaches an online shopping system and method connecting a plurality of online consumer terminals to a plurality of virtual stores via the Internet as a communication system (see at least abstract; Fig. 1 (1, 2, 3, 9); col. 1, lines 4-15; col. 2, lines 10-24). Yamada teaches aggregating consumer purchases at a geographic location designated by the consumer, the location being the consumer's house or other designated location. Yamada further teaches:

- Associating a plurality of items ordered by the consumer from a plurality of merchants: on a computer, consumers order items from a plurality of virtual stores; orders products and selects a plurality of places (please note examiner's interpretation: consumer can select the same place multiple times as a plurality of places) (see at least col. 2, lines 19-21; col. 4, lines 60-65).
- Receiving the associated items at a single geographic location: designated single geographic location receives delivery of consumer order(s) (e.g. consumer order delivered to designated convenience store) (see at least col. 3, lines 34-37).
- Presenting to the consumer a set of at least one predetermined geographic location from which the consumer is prompted to make a selection: consumer makes a station change from a predetermined list of geographic locations (see at least Figs 4-6); col. 4, lines 31—41).
- Merchant receives instructions: merchant is aware of consumer selected location (see at least Fig. 1 (1, 4-9); col. 2, line 10 through col. 3, line 37).
- Receiving a notification of receiving a delivery: system provides notification of delivery to specified location to the consumer (see at least col. 3, lines 55-57).
- Providing identification: consumer provides ID information (see at least col. 3, line 66 through col. 4, line3).

- Providing a consumer date and time: (see col. 3, lines 15-18).
- For each consumer, physically aggregating the items at the location:

Yamada teaches all the above as noted under the 103(a) rejection and teaches a) an order fulfillment system delivering items purchased via an electronic commerce site to a delivery location that receives and stores the consumer's orders for pick-up, b) aggregating a consumer's order at a retailer location and delivering directly to a consumer or to a store location, and c) using convenience stores as alternative delivery locations for consumer pick-up convenience, but does not disclose the local store as an aggregation facility. Netship teaches decentralizing the online market by implementing distributed warehousing using regional or local inventory locations. Netship teaches using fulfillment houses for pick, pack and ship services, and shipping in bulk quantities using trucks. Netship teaches problems with tracking individual consumer orders and higher cost associated with shipping an individual order from a central facility. Netship teaches shipping from regional facilities, and further teaches Netship's virtual warehouse comprising a network of inventory locations using Parcel Plus store locations, using Parcel Plus locations as virtual warehouses and providing pick-and pack operations (please note examiner's interpretation: Parcel Plus is serving as an aggregator) (U: see at least pages 1-2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of

Yamada to disclose store locations serving as regional or local aggregators of goods purchased online as taught by NetShip, in order to provide consumer convenience and reduced fulfillment costs, and thereby attract consumers and online merchants to the service.

- Transferring the aggregated items to the consumer; delivery or pick-up:

Yamada teaches all the above as noted under the 103(a) rejection and teaches a) the system providing fulfillment instructions, b) aggregating an online consumer's purchased items at a retailer location, a retailer transferring items to a home deliverer who then delivers directly to the consumer or to a consumer's alternate delivery location (e.g. a store location), and c) the alternate delivery location serving as a pick-up location for the consumer, but does not disclose the alternate delivery location delivering the aggregated items to the consumer. NetShip teaches all the above as noted under the 103(a) rejection and teaches a) merchants using a local store location to aggregate inventory and delivering the consumer's goods directly from the aggregator's location using one-day ground service or allowing the consumer to pick-up goods at the aggregator's location (U: see at least page 2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Yamada to deliver aggregated items from a local store to the consumer as taught by Netship, in order to provide additional

consumer convenience, and thereby attract consumers to the service desiring either pick-up or local delivery.

**3. Claim 3 is rejected under 35 USC 103(a) as being unpatentable over Yamada (patent number 6,336,100) and Netship (PTO-892, Item: U), as applied to Claim 1.**

Yamada and Netship teach all the above as noted under the 103(a) rejection and teach a) providing consumer shopping convenience by offering alternative delivery locations for online consumers, c) the server transmitting pending delivery information to the manufacturer or wholesaler, the retailer, and the merchandise management center (see at least col. 3, lines 13-18), c) the store location notifying the server after receiving a consumer's delivered order, and d) the system notifying the consumer of a delivered item to a local store ready for consumer pick-up (please note examiner's interpretation: also a consumer convenience) (see at least col. 3, lines 5-60), but does not disclose the consumer receiving a notification of a pending delivery to the location. It would have been obvious to one of ordinary skill in the art at time of the invention to disclose the consumer receiving a notification of a pending delivery to the location, since one of ordinary skill in the art would ascertain pending delivery notification to the customer's selected location as providing an additional consumer notification convenience, and thereby attract consumers to the service.

**4. Claim 19 is rejected under 35 USC 103(a) as being unpatentable over Yamada (patent number 6,336,100) and Netship (PTO-892, Item: U), as applied to Claim 1, further in view of Official Notice (regarding fulfillment center facilities).**

Yamada and Netship teach all the above as noted under the 103(a) rejection and teach a) locally aggregating purchased items and inventoried items in store locations, b) trucks used to delivered items, and c) pick, pack, and shipping of items, but do not disclose detail of the local store's facilities. This examiner takes the position that it is old and well-known in the arts for fulfillment centers to have loading/un-loading docks for trucks to aid in efficient transfer to/from the delivery truck. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to disclose loading/un-loading docks as taught by Official Notice, in order to efficiently transfer items to/from delivery trucks.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- V: PaxZone: Internet Archive Wayback Machine, [www.archive.org](http://www.archive.org); [www.paxzone.com](http://www.paxzone.com); 28 November 1999, 1pg; teaches a network of stores serving as local delivery locations for goods purchased by consumers; online consumers are notified by email, fax, or telephone of delivery; items are stored in a locked cabinet.
- W: Combini: Landers, Peter; "Japan Offers High-Tech Convenience Stores," The Salt Lake Tribune, 04 August 1996, 2pgs, Proquest #15870405; teaches convenience stores (combinis) as places to send packages for consumer pick-up.
- X: Combini: Landers, Peter; "In Japan, the Hub of E-Commerce is a 7-Eleven—Without Credit Cards, Shoppers Order Online and Pick Up at a Local Convenience Store," Wall Street Journal, 01 November 1999, 3pgs, Proquest #4948096; teaches online ordering of goods, local convenience stores serving as merchandise depots for goods ordered through electronic commerce sites.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone

number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Ms. Wynn Coggins** can be reached on 703-308-1344.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

**703-872-9306** (Official communications; including After Final communications labeled "Box AF")

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.



Robert M. Pond  
Patent Examiner  
November 15, 2004